

REMARKS

No claims have been cancelled or added. Accordingly, claims 1-18 are pending in this application. No claims have been amended.

The Office Action indicated that claims 1-9 and 15-18, including independent claims 1 and 15, are allowed. Also, dependent claim 11 was indicated to be allowable if rewritten.

Independent claim 10 was rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,805,205 to Gabard. The Office Action indicated that Gabard's flexible carpet mat 2 was considered to be a means for removing a soil plug because "applicant has not invoked 35 U.S.C. § 112, ¶ 6." Applicants respectfully disagree and submit that independent claim 10 was presented in a format that did invoke 35 U.S.C. § 112, ¶ 6 before the Office Action was communicated on November 4, 2005. According to MPEP § 2181:

A claim limitation will be interpreted to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis:

- (A) the claim limitations must use the phrase "means for" or "step for;"
- (B) the "means for" or "step for" must be modified by functional language; and
- (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function.

There is no question that the language of independent claim 10 met this 3-prong analysis before the Office Action was communicated. Indeed, the Office Action agreed that independent claim 10 did not recite "specific structure" to remove the applicability of 35 U.S.C. § 112, ¶ 6.

Accordingly, independent claim 10 clearly invoked 35 U.S.C. § 112, ¶ 6 before the Office Action raised the new rejection based upon the Gabard reference, and such a rejection was therefore improper (e.g., the Gabard reference does not disclose a "means for removing a soil plug" as described in claim 10 according to 35 U.S.C. § 112, ¶ 6).

Applicants respectfully submit that the rejection must be withdrawn because it was based upon the improper interpretation of independent claim 10 according to MPEP § 2181. Further, Applicants request that this Reply be entered in accordance with MPEP § 714.12, for this Reply (i) is purely a result of the Patent Office's misapplication of MPEP § 2181 and 35 U.S.C. § 112, ¶ 6 and (ii) does not raise new issues that would require further consideration and/or search (e.g., independent claim 10 clearly invoked 35 U.S.C. § 112, ¶ 6 before the Office Action raised the new rejection based upon the Gabard reference). The Examiner is encourage to contact Applicants' attorney with any questions.

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Applicants repeat that which was stated in the August 17, 2005 Amendment: claims 10-14 are in condition for allowance. No fee is believed to be due at this time. If necessary, please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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